



IN THE FIRST JUDICIAL DISTRICT COURT
IN AND FOR LARAMIE COUNTY, STATE OF WYOMING

PEOPLE OF THE STATE OF
WYOMING,

Plaintiff,

v.

MWE SERVICES, INC., a Nebraska
corporation, dba MIDWEST
DEMOLITION COMPANY,

Defendant.

Docket No. 181-743

4938-11

FILED

AUG 20 2015

DIANE SANCHEZ
CLERK OF THE DISTRICT COURT

CONSENT DECREE

The People of the State of Wyoming, by and through the Department of Environmental Quality, Air Quality Division (DEQ), and the Wyoming Attorney General's Office, filed a complaint pursuant to sections 901(a) and 903(c) of the Wyoming Environmental Quality Act (Act), Wyo. Stat. Ann. §§ 35-11-901(a) and -903(c), against Defendant MWE Services, Inc., doing business as Midwest Demolition Company (Midwest), alleging that Midwest violated the Act and the Wyoming Air Quality Standards and Regulations (Air Quality Rules). DEQ and Midwest (hereinafter referred to as Parties) agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties at arm's length and in good faith, under Wyo. Stat. Ann. § 35-11-901(a)(ii), and will avoid or settle certain litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, the Parties have agreed to the following terms for resolving this litigation prior to trial and, with the consent of the Parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. Jurisdiction and Venue

A. This Court has jurisdiction over the subject matter of this civil action pursuant to Wyo. Stat. Ann. § 35-11-901(a).

B. This Court has jurisdiction over the Parties pursuant to Wyo. Stat. Ann § 5-1-107(a).

C. Venue is proper in Laramie County pursuant to Wyo. Stat. Ann. § 35-11-903(c).

II. Parties

A. DEQ is the executive branch agency of Wyoming state government responsible for administering and enforcing the Act.

B. Defendant Midwest is a "person" under Wyo. Stat. Ann. § 35-11-103(a)(vi).

III. Background

A. In its complaint, DEQ alleged that, Midwest was an "operator of a demolition or renovation activity" at the Lingle-Fort Laramie High School in Goshen County. *Rules Wyo. Dep't of Envtl. Quality, Air Quality*, ch. 1, § 8(b).

B. In its complaint, DEQ alleged that, on or about June 29-30, 2011, Midwest engaged in demolition or renovation activities at the Lingle-Fort Laramie High School that were in contravention of the Act and the Air Quality Rules.

C. In its complaint, DEQ alleged that, Midwest was an "operator of a demolition or renovation activity" at the Southeast High School in Goshen County. *Rules Wyo. Dep't of Envtl. Quality, Air Quality*, ch. 1, § 8(b).

D. In its complaint, DEQ alleged that, on or about the middle of June 2011 until July 5, 2011, Midwest engaged in demolition or renovation activities at the Southeast High School that were in contravention of the Act and the Air Quality Rules.

IV. Settlement

A. Midwest agrees to pay to the DEQ the amount of two thousand five hundred dollars (\$2,500) as a stipulated penalty. Midwest agrees to make full payment by check made payable to the Wyoming DEQ within thirty (30) days after this Consent Decree has been entered with the Court. Midwest agrees to mail the payment to Ann Shed, DEQ, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002.

B. This Consent Decree resolves without litigation the contested and disputed claims between the State of Wyoming and Midwest that were specifically alleged in the Complaint. The Parties are aware of the expense and uncertainty of litigation and prefer to resolve their differences regarding the matters covered by this Consent Decree through negotiation and bring this matter to a conclusion.

V. Release and Covenant Not to Sue and Dismissal with Prejudice

A. DEQ agrees that payment of the stipulated penalty as specified in Section IV shall constitute full satisfaction of the claims specifically alleged in the Complaint and in the Notice of Violation 4938-11 identified at Complaint, Paragraphs 57 and 66.

B. In consideration of Midwest's performance of the terms specified under Section IV of this Consent Decree and full compliance with the remaining terms of the Consent Decree, DEQ and the State of Wyoming hereby release and covenant not to sue Midwest and its respective successors, assigns, affiliates, parents, officers, directors, employees, and representatives, as to any common law, statutory, or other claims or causes or action arising out of the facts, transactions, or events alleged in the Complaint initiating this action or in the Notice

of Violation 4938-11, identified at Complaint, Paragraphs 57 and 66, and based on the knowledge DEQ actually had at the time of issuing the Notice of Violation.

C. This covenant not to sue is expressly conditioned upon the complete and satisfactory performance by Midwest of all terms of this Consent Decree.

D. Within thirty (30) days after DEQ has received the full amount of the stipulated penalty, described in Section IV, DEQ shall request that the Court terminate this Consent Decree and dismiss this action with prejudice as to all claims which were alleged in the Complaint.

E. The Terms of Section V shall survive the termination of the Consent Decree.

VI. Parties Bound

A. This Consent Decree shall apply to, and be binding upon, MWE Services, Inc., doing business as Midwest Demolition Company, its successors, and assigns, and upon DEQ and the State of Wyoming.

B. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Consent Decree shall not be construed as to so create such status. The rights, duties, and obligations contained in this Consent Decree shall operate among the Parties to this Consent Decree.

C. Nothing in this Consent Decree relieves Midwest of its duty to comply with the Act, the Air Quality Rules, the federal Clean Air Act, and any rules, regulations, and standards adopted thereunder, including any permit requirements.

D. Nothing in this Consent Decree precludes DEQ from taking enforcement actions from other or future violations not specifically addressed in this Consent Decree.

VII. Terms Not Severable

The terms of this Consent Decree, which embodies the comprehensive settlement between the Parties, are not severable.

VIII. Reservation of Right

A. By signing this Consent Decree, Midwest does not admit that it violated any provision of the Act, the Air Quality Rules, the federal Clean Air Act, or permits or waivers issued pursuant to such authority. By entering this Consent Decree, Midwest does not admit or deny the validity of any allegation contained in the Notice of Violation or the Complaint.

B. DEQ and the State of Wyoming reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, including seeking injunctive relief and/or civil penalties.

C. DEQ and the State of Wyoming do not waive sovereign immunity by entering into this Consent Decree and retain immunity and all defenses available to them as sovereigns under all state and federal law, except that any of the Parties may bring an action to seek interpretation or enforcement of this Consent Decree. In the event that DEQ prevails in an action to enforce this Consent Decree, Midwest shall bear DEQ's costs and fees. In all other cases, each party shall bear its own costs, fees, and expenses.

IX. Termination of Consent Decree

Except as otherwise provided in Section V, the terms and conditions of this Consent Decree shall terminate upon the DEQ's filing of written notice to the Court confirming the completion of Midwest's obligations under this Consent Decree and the Court's entry of a Termination and Dismissal Order.

X. Attorneys' Fees/Costs of Action

Each party shall bear its own attorneys' fees and costs of this action.

XI. Retention of Jurisdiction

This Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree, to enter such orders as are appropriate under the Consent Decree, and to resolve all disputes as may be necessary or appropriate for the construction or to carry out the terms of this Consent Decree until it is terminated as provided above.

XII. Authority

The signatories certify that they are duly authorized to bind their respective Parties to this Consent Decree.

[INTENTIONALLY LEFT BLANK]

DATED this 18 day of August, 2015.

51 Catherine R. G.
District Court Judge

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

Steven A. Dietrich
Steven A. Dietrich, Administrator
Air Quality Division

8-3-15
Date

Todd Parfitt
Todd Parfitt, Director
Department of Environmental Quality

8/4/15
Date

FOR MWE SERVICES, INC., d/b/a MIDWEST DEMOLITION COMPANY:

By: [Signature]
By: Kate [Signature]
Its: President

7/24/15
Date

APPROVAL AS TO FORM:

[Signature]
Elizabeth Lyon (#7-5307)
Attorney General's Office
123 State Capitol
Cheyenne, WY 82002
(307) 777-6946

7/31/15
Date

Attorney for the Wyoming Department of Environmental Quality, Air Quality Division

STATE OF WYOMING COUNTY OF LARAMIE, SS CHEYENNE

I, Duane Sanchez, Clerk of the District Court in and for the County of Laramie, Wyoming, do hereby certify that the within and foregoing is a true and correct copy of the original thereof as the same appears in my office and that the same is a true and correct copy of the original thereof as of this date.

Witness my hand and seal of said office this 20 day of August, 2015.

[Signature]
DUANE SANCHEZ
Clerk of District Court
By [Signature]
Deputy

CERTIFICATE OF SERVICE

I hereby certify that on the 20 ^{August} day of July, 2015, a true copy of the foregoing *Consent Decree* was mailed, postage prepaid to the following:

Mitchell H. Edwards *Mr*
Nicholas & Tangeman, LLC
P.O. Box 928
170 N. 5th Street
Laramie, WY 82073

Elizabeth Lyon *Ms*
Assistant Attorney General
123 State Capitol
Cheyenne, WY 82002

Brenda Nuge
Clerk of District Court